

#### **H. PREVENT DESTRUCTION OF KNOWN EVIDENCE**

In certain circumstances a warrantless search may be conducted in order to seize evidence that would be destroyed if not first seized. The exigency of the circumstance must be articulated and probable cause must have been established prior to conducting the warrantless search.

**PREVENT DESTRUCTION OF KNOWN EVIDENCE**  
**SELECTED CASES**

**CLARK v State** (Vehicle Search - Exigent Circumstances) bulletin no. 12. Although three individuals were suspected of involvement in the sale of drugs, only two were arrested. The suspect's rented vehicle, which was parked on a public street, was seized and searched. A quantity of drugs was discovered in the glove compartment and subsequently introduced as evidence at the defendant's trial. The Court held the warrantless search of the vehicle was due to exigent circumstances. The third suspect, whose whereabouts were unknown, could have returned to the vehicle and destroyed the evidence.

**FINCH v State** (Warrantless Search of Hotel Room) bulletin no. 22. Female assault victim reported event took place in hotel and that the assailant told her that he would destroy the evidence. Police arrived at the hotel and attempted to obtain entry by knocking on the door and telephoning the room. Since their efforts went unanswered and neither light nor noise was observed in the room, the hotel manager was requested to open the door. Once the door was opened, it was evident that the suspect was not present, but evidence of the assault was discovered and seized. The Court ruled the evidence inadmissible stating that an emergency did not exist. The Court further stated that one officer should have remained at the scene while the other officer obtained a warrant.

**JOHNSON v State** (Warrantless Seizure of a Person from Private Residence) bulletin no. 66. Warrantless entry of residence and resulting seizure of rape suspect who had threatened to "blow away his victim" upheld as "exigent circumstance." Subsequent seizure (by warrant) of bed clothing was also upheld due to the possibility of destruction of evidence prior to suspect's arrest.

**McGEE v State** (Warrantless Seizure of Handgun for Test Firing) bulletin no. 38. In course of investigating an assault, the police officer inquired if subject owned an automatic weapon; the subject entered his residence and returned with the suspected weapon. The officer requested the subject's permission to seize the weapon for test firing, but was denied permission without a warrant. The officer seized the weapon, which was subsequently identified as the weapon used in the assault. The Court ruled the weapon admissible because it was in the officer's "plain view" when subject produced weapon and, if not seized at that time, the suspect could have disposed of it.

**PAYTON v New York** (Warrantless Entry into Private Residence to Effect Arrest) bulletin no. 34. Police, without a warrant, made a forced entry into an apartment to effect an arrest. The defendant was not present at the time; however, in plain view was a shell casing. The shell casing was seized and subsequently introduced as evidence at the trial. The evidence (shell casing) was suppressed because of the warrantless entry.

State statutes cannot be enacted that enable police to violate the constitution. Twenty-five states (including Alaska) have enacted statutes that allow police to make warrantless entry into a private residence based on probable cause. The U.S. Supreme Court ruled that these statutes were unconstitutional because they violated the Fourth Amendment. The court stated that the Fourth Amendment has drawn a firm line at the entrance to a house and that absent exigent circumstances, that threshold may not be reasonably crossed without a warrant.

**MOORE v State** (Warrantless Search of Person Present in Residence During Execution of Warrant to Avoid Destruction of Evidence) bulletin no. 163. Police executed a search warrant at a "crack house." A female in the house was subjected to a pat down search and nothing was found, although a bag of cocaine was on the floor near her feet. She was then subjected to a full search based on circumstances developed at the scene. The search was proper because probable cause was developed to justify the search. The officer knew it was common practice for females to hide drugs on their person at "crack houses," numerous individuals tried to flee the scene or avoid contact with police when the warrant was served, destruction of evidence was a distinct possibility, and the residence was not a public facility where innocent people were more likely to be present.

**KENTUCKY v King** (Warrantless Entry into Private Residence to Prevent Destruction of Evidence) bulletin no. 354. During controlled buy operation, the suspect dealer left the area by running towards the breezeway of an apartment complex. By the time the officers got there to make the arrest they could hear a door closing and the smell of Marijuana. There were two apartments, one on the right and one on the left. The officers could smell Marijuana emanating from the apartment on the left. The officers banged on the door and as loud as they could shouted "police." At that time they could hear movement in the apartment and thought that someone might be destroying evidence. They announced they were police and made a forced entry. There were 3 persons in the apartment. Police seized marijuana, cocaine, cash, and drug paraphernalia. It turned out that the suspected drug dealer (who was later apprehended) actually had gone to the apartment on the right. King argued the police had no right to make the warrantless entry into his apartment. U.S. Supreme Court ruled this was an exigency and that they had a right to enter to prevent the destruction of evidence.